

Introduced by Senator Wieckowski

February 19, 2016

An act to amend Sections 1122, 1137, 1170.1, 1190, 1190.1, 1195.1, 1196.1, 1200, 1201, 1201.5, and 1202 of, to add Sections 1103, 1190.2, 1190.3, 1190.5, 1191.1, 1195.2, 1196.2, and 1204 to, to add and repeal Section 1190.4 of, and to repeal and add Section 1191 of, the Harbors and Navigation Code, relating to harbors and navigation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1312, as introduced, Wieckowski. Bar pilotage rates.

(1) Existing law provides for the licensing and regulation of pilots for the Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun, by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun in the Transportation Agency. Existing law establishes pilotage rates and surcharges that are paid to licensed pilots by vessels piloted in those bays. Existing law establishes those pilotage rates and surcharges, and provides for changes to them based on the number of pilots licensed by the board and recommendations by the board to the Legislature. Existing law requires each licensed pilot to submit a monthly account to the board of all moneys received by the pilot for pilotage services.

This bill would revise and recast those provisions and would require that certain surcharges be separately identified on the pilots' invoices and in their monthly account to the board. The bill would, until January 1, 2021, additionally authorize a technology surcharge, not to exceed a cumulative amount of \$1,200,000, to recover pilots' costs for navigation software, hardware, and equipment authorized by the board on or after January 1, 2017. The bill would require the board to submit

a schedule of all pilotage rates and surcharges to the Office of Administrative Law for publication in the California Regulatory Notice Register and to post that schedule on the board's Internet Web site. The bill would require an independent audit of all charges collected by pilots to be conducted annually by a public accountant selected by the board.

(2) Existing law requires the Board of Pilot Commissioners to review and evaluate pilotage expenses in making recommendations to the Legislature to adjust certain pilotage rates. Existing law establishes procedures for any party directly affected by those rates to petition the board for a public hearing. Existing law requires the board, at the conclusion of the hearings, to review and evaluate the evidence and to submit to the Secretary of the Senate and the Chief Clerk of the Assembly a copy of its findings and recommendations for a final determination.

Existing law requires each vessel to pay a board operations surcharge to compensate the board and the Transportation Agency for the services and incidental expenses of the board and agency. Existing law requires those moneys to be deposited in the Board of Pilot Commissioner's Special Fund and continuously appropriates those moneys for the compensation and expenses of the board and its officers and employees.

This bill would instead require the hearing on a petition to be before an administrative law judge, as provided, who would act as a finder of fact. The bill would prescribe procedures for the conduct of those hearings, the review of evidence, and the filing of decisions. The bill would require the board to review and evaluate the administrative law judge's decision and either submit the decision to the Secretary of the Senate and the Chief Clerk of the Assembly or prepare and submit a written statement of its reasons for not doing so. The bill would require the administrative law judge to be compensated by the board from revenues from the board operations surcharge. By authorizing the expenditure of continuously appropriated funds for a new purpose, the bill would make an appropriation.

(3) Existing law requires that moneys collected from a pilot trainee surcharge and a pilot continuing education surcharge be deposited into the Board of Pilot Commissioner's Special Fund and continuously appropriates those moneys for pilot trainee and pilot continuing education programs, respectively.

This bill would create the Pilot Trainee Special Fund, require moneys collected from the pilot trainee surcharge to be deposited into that fund, and continue to continuously appropriate those moneys for pilot trainee

programs. The bill would also create the Pilot Continuing Education Special Fund, require moneys collected from the pilot continuing education surcharge to be deposited into that fund, and require those moneys, upon appropriation, to be used for pilot continuing education programs.

(4) Under existing law, a pilot who is carried to sea against the pilot's will or unnecessarily detained on board a vessel, as provided, is entitled to receive \$600 per day, plus expenses, from the owner, operator, or agents of the detaining vessel.

This bill would increase that amount to \$2,028 per day.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to improve the
2 process by which bar pilotage rates and charges are set, managed
3 and maintained, and published by the Board of Pilot
4 Commissioners. It is further the intent of the Legislature that the
5 provisions of this act will reflect the actual rates and charges paid
6 by vessels operating in Monterey Bay, and the Bays of San
7 Francisco, San Pablo, and Suisun. It is not the intent of the
8 Legislature that this act will result in the increase of any pilotage
9 rates or charges currently in effect.

10 SEC. 2. Section 1103 is added to the Harbors and Navigation
11 Code, to read:

12 1103. The Legislature finds and declares all of the following:

13 (a) Transparency and accountability regarding how the board
14 operates and makes its decisions is critical to gaining and retaining
15 the confidence of the public and serving the ratepayers affected
16 by its decisions.

17 (b) In order to ensure and promote the highest level of safety
18 in pilotage and to eliminate competition between state-licensed
19 pilots on the basis of the rate of charges to vessels, the state enacts
20 statutes that set a tariff of charges and levies that must be paid by
21 vessels for the provision of pilotage services by a pilot licensee.

22 (c) The economic benefits of ocean-going vessels' safe
23 navigation to our ports are essential to our day-to-day lives and
24 fundamentally affect every California family and business. Because
25 of the importance that ocean-going vessels play in our economy,

1 the pilotage tariff schedule set forth in this division, its
2 management, and any recommendations for the amendment of
3 existing pilotage rates should be maintained and implemented in
4 a manner that is transparent and accountable to the public.

5 (d) The greater and more unfettered the public's power in an
6 important component of our economy, the greater the public's
7 interest in monitoring the exercise of that power. Accordingly, the
8 conduct of the public's business by the board is of the highest
9 public interest.

10 SEC. 3. Section 1122 of the Harbors and Navigation Code is
11 amended to read:

12 1122. (a) A pilot carried to sea against the pilot's will, or
13 unnecessarily detained on board a vessel when a pilot vessel is in
14 attendance to receive the pilot, shall receive ~~six hundred dollars~~
15 ~~(\$600)~~ *two thousand twenty-eight dollars (\$2,028)* per day while
16 so carried to sea or detained, plus reimbursement for any expenses
17 incurred by the pilot in returning to the pilot station.

18 (b) The owner, operator, and agents of the detaining vessel are
19 jointly and severally liable for paying the amount specified in
20 subdivision (a).

21 SEC. 4. Section 1137 of the Harbors and Navigation Code is
22 amended to read:

23 1137. (a) The account required pursuant to Section 1136 shall
24 show all of the following:

- 25 (1) The name of each vessel piloted.
26 (2) The name of each vessel for which pilotage has been charged
27 or collected.
28 (3) The amount charged to or collected for each vessel.
29 (4) Any rebates made and allowed and for what amounts.
30 (5) The amount of the fees and surcharges not collected pursuant
31 to Section 1193.
32 (6) The depth of each vessel's draft and its highest gross
33 tonnage.
34 (7) Whether the vessel was inward or outward bound.
35 (b) The board shall record the accounts in full detail in a book
36 prepared for that purpose. The account book is a public record.
37 (c) *The board shall cause an independent audit of all charges*
38 *collected by pilots pursuant to this division to be conducted*
39 *annually by a public accountant selected by the board.*

SEC. 5. Section 1170.1 of the Harbors and Navigation Code is amended to read:

1170.1. In determining the number of pilots needed, pursuant to Section 1170, the board shall take into consideration the findings and declarations in Sections ~~1100 and 1101~~, *1100, 1101, and 1102*, the results of an audit made pursuant to, and the factors specified in, Section 1203, the industry's current economic trends, fluctuations in the number of vessel calls, the size of vessels, ~~and whether the need for pilotage is increasing or decreasing.~~ *decreasing, the 1986 manpower study adopted by the board, and the results of the study required pursuant to Section 1196.5.*

SEC. 6. Section 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) (1) Every vessel spoken inward or outward bound shall pay ~~the following~~ a rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and ~~Suisun~~:

(1) Eight dollars and eleven cents (\$8.11) ~~Suisun of ten dollars and twenty-six cents (\$10.26)~~ per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of ~~73.01 mills ninety-two and four hundred twenty-three thousandths mills (\$0.092423)~~ per high gross registered ton ~~as changed pursuant to law in effect o December 31, 1999. The mill rates established by this paragraph may be changed as follows: ton.~~

(A) (i) ~~On and after January 1, 2010, if the number of pilots licensed by the board is 58 or 59 pilots, the mill rate in effect on December 31, 2006, shall be decreased by an incremental amount that is proportionate to one-half of the last audited annual average net income per pilot for each pilot licensed by the board below 60 pilots.~~

(ii) ~~On and after January 1, 2010, if the number of pilots licensed by the board is fewer than 58 pilots, the mill rate in effect on December 31, 2006, shall be adjusted in accordance with the method described in clause (i) as though there are 58 pilots licensed by the board.~~

(iii) ~~The incremental mill rate adjustment authorized by this subparagraph shall be calculated using the data reported to the board for the number of gross registered tons handled by pilots licensed under this division during the same 12-month period as the audited annual average net income per pilot. The incremental~~

1 mill rate adjustment shall become effective at the beginning of the
2 immediately following quarter, commencing January 1, April 1,
3 July 1, or October 1, as directed by the board.

4 (iv) ~~On and after January 1, 2010, if, during any quarter~~
5 ~~described in this paragraph, the number of pilots licensed by the~~
6 ~~board is equal to or greater than 60, clauses (i) to (iii), inclusive,~~
7 ~~shall become inoperative on the first day of the immediately~~
8 ~~following quarter.~~

9 (B) ~~There shall be an incremental rate of additional mills per~~
10 ~~high gross registered ton as is necessary and authorized by the~~
11 ~~board to recover the pilots' costs of obtaining new pilot boats and~~
12 ~~of funding design and engineering modifications for the purposes~~
13 ~~of extending the service life of existing pilot boats, excluding costs~~
14 ~~for repair or maintenance. The incremental mill rate charge~~
15 ~~authorized by this subparagraph shall be identified as a pilot boat~~
16 ~~surcharge on the pilots' invoices and separately accounted for in~~
17 ~~the accounting required by Section 1136. Net proceeds from the~~
18 ~~sale of existing pilot boats shall be used to reduce the debt on the~~
19 ~~new pilot boats and any debt associated with the modification of~~
20 ~~pilot boats under this subparagraph. The board may adjust a pilot~~
21 ~~boat surcharge to reflect any associated operational savings~~
22 ~~resulting from the modification of pilot boats under this~~
23 ~~subparagraph, including, but not limited to, reduced repair and~~
24 ~~maintenance expenses.~~

25 (C) ~~In addition to the incremental rate specified in subparagraph~~
26 ~~(B), the mill rate established by this subdivision may be adjusted~~
27 ~~at the direction of the board if, after a hearing conducted pursuant~~
28 ~~to Article 9 (commencing with Section 11120) of Chapter 1 of~~
29 ~~Part 1 of Division 3 of Title 2 of the Government Code, the board~~
30 ~~determines that there has been a catastrophic cost increase to the~~
31 ~~pilots that would result in at least a 2-percent increase in the overall~~
32 ~~annual cost of providing pilot services.~~

33 (2) ~~A minimum charge for bar pilotage shall be six hundred~~
34 ~~sixty-two dollars (\$662) for each vessel piloted.~~

35 (3) ~~The vessel's deepest draft shall be the maximum draft~~
36 ~~attained, on a stillwater basis, at any part of the vessel during the~~
37 ~~course of such transit inward or outward.~~

38 (b) ~~The rate specified in subdivision (a) is the bar pilotage rate~~
39 ~~and that rate alone shall apply only to a pilotage that passes~~
40 ~~through the Golden Gate to or from the high seas to or from a berth~~

1 within an area bounded by the Union Pacific Railroad Bridge to
2 the north and Hunter's Point to the south. The rate for pilotage to
3 or from the high seas to or from a point past the Union Pacific
4 Railroad Bridge or Hunter's Point shall include ~~a movement fee~~
5 ~~in addition to the basic~~ *both the* bar pilotage rate as specified by
6 ~~the board in subdivision (a) and an additional movement fee as~~
7 *specified* pursuant to Section 1191.

8 (c) The rate established in paragraph (1) of subdivision (a) shall
9 be for a trip from the high seas to dock or from the dock to high
10 seas. The rate specified in Section 1191 shall not be charged by
11 pilots for docking and undocking vessels. ~~This subdivision does~~
12 ~~not apply to the rates charged by inland pilots for their services.~~

13 (d) ~~The board shall determine the number of pilots to be licensed~~
14 ~~based on the 1986 manpower study adopted by the board.~~

15 (e) ~~Consistent with the board's May 2002 adoption of rate~~
16 ~~recommendations, the rates imposed pursuant to paragraph (1) of~~
17 ~~subdivision (a) that are in effect on December 31, 2002, shall be~~
18 ~~increased by 4 percent on January 1, 2003; those in effect on~~
19 ~~December 31, 2003, shall be increased by 4 percent on January 1,~~
20 ~~2004; those in effect on December 31, 2004, shall be increased by~~
21 ~~3 percent on January 1, 2005; and those in effect on December 31,~~
22 ~~2005, shall be increased by 3 percent on January 1, 2006.~~

23 (f) (1) ~~There shall be a movement fee as is necessary and~~
24 ~~authorized by the board to recover a pilot's costs for the purchase,~~
25 ~~lease, or maintenance of navigation software, hardware, and~~
26 ~~ancillary equipment purchased after November 5, 2008, and before~~
27 ~~January 1, 2011.~~

28 (2) ~~The software, equipment, and technology covered by this~~
29 ~~subdivision shall be used strictly and exclusively to aid in piloting~~
30 ~~on the pilotage grounds. The movement fee authorized by this~~
31 ~~subdivision shall be identified as a navigation technology surcharge~~
32 ~~on a pilot's invoices and separately accounted for in the accounting~~
33 ~~required by Section 1136. The board shall review and adjust as~~
34 ~~necessary the navigation technology surcharge at least quarterly.~~
35 ~~This subdivision shall become inoperative on January 1, 2011.~~

36 SEC. 7. Section 1190.1 of the Harbors and Navigation Code
37 is amended to read:

38 1190.1. Every vessel that uses a pilot under this division while
39 navigating the waters of Monterey Bay shall pay the rate provided
40 by subdivisions (a) and (e) of Section 1190.

1 SEC. 8. Section 1190.2 is added to the Harbors and Navigation
2 Code, to read:

3 1190.2. (a) In addition to the rate specified in Section 1190,
4 there may be an incremental rate of additional mills per high gross
5 registered ton as is necessary and authorized at the direction of the
6 board if, after a public meeting conducted in accordance with the
7 requirements of the Bagley-Keene Open Meeting Act (Article 9
8 (commencing with Section 11120) of Chapter 1 of Part 1 of
9 Division 3 of Title 2 of the Government Code), the board
10 determines that there has been a catastrophe or natural disaster
11 that has resulted in significant, unexpected cost increases that are
12 necessary to restore pilot services to customers, repair, replace, or
13 restore damaged pilot facilities or equipment, or to comply with
14 government agency orders resulting from a declared disaster.

15 (b) The incremental mill rate charge authorized by this section
16 shall be identified as a catastrophic event surcharge on the pilots'
17 invoices and separately accounted for in the accounting required
18 by subdivision (b) of Section 1136.

19 (c) Proceeds from the catastrophic event surcharge shall be used
20 only to recover the pilots' costs related to the catastrophe or natural
21 disaster underlying the incremental mill rate charge, and the
22 surcharge shall cease to be collected upon full recovery of those
23 costs.

24 SEC. 9. Section 1190.3 is added to the Harbors and Navigation
25 Code, to read:

26 1190.3. (a) There shall be an incremental rate of additional
27 mills per high gross registered ton as is necessary and authorized
28 by the board to recover the pilots' costs of obtaining new pilot
29 boats and of funding design and engineering modifications for the
30 purposes of extending the service life of existing pilot boats,
31 excluding costs for repair or maintenance. The board may adjust
32 the incremental rate to reflect any associated operational savings
33 resulting from the modification of pilot boats under this section,
34 including, but not limited to, reduced repair and maintenance
35 expenses.

36 (b) The incremental mill rate charge authorized by subdivision
37 (a) shall be identified as a pilot boat surcharge on the pilots'
38 invoices and separately accounted for in the accounting required
39 by subdivision (b) of Section 1136.

1 (c) Net proceeds from the sale of existing pilot boats shall be
2 used to reduce the debt on the new pilot boats and any debt
3 associated with the modification of pilot boats under this section.

4 SEC. 10. Section 1190.4 is added to the Harbors and Navigation
5 Code, to read:

6 1190.4. (a) There shall be a movement fee as is necessary and
7 authorized by the board imposed to recover a pilot's costs for the
8 purchase, lease, or maintenance of navigation software, hardware,
9 and ancillary equipment that is authorized by the board as
10 reasonable and necessary on or after January 1, 2017.

11 (b) The software, equipment, and technology covered by this
12 section shall be used strictly and exclusively to aid in piloting on
13 the pilotage grounds.

14 (c) The movement fee authorized by this section shall be
15 identified as a navigation technology surcharge on a pilot's invoices
16 and separately accounted for in the accounting required by
17 subdivision (b) of Section 1136.

18 (d) The cumulative amount of the surcharge collected pursuant
19 to this section shall not exceed one million two-hundred thousand
20 dollars (\$1,200,000).

21 (e) The board shall review and adjust as necessary the navigation
22 technology surcharge authorized by this section at least quarterly.

23 (f) This section shall remain in effect only until January 1, 2021,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2021, deletes or extends that date.

26 SEC. 11. Section 1190.5 is added to the Harbors and Navigation
27 Code, to read:

28 1190.5. The board shall submit to the Office of Administrative
29 Law for publication in the California Regulatory Notice Register
30 and shall post on its Internet Web site the schedule of all pilotage
31 rates and surcharges in effect pursuant to Sections 1190, 1190.2,
32 1190.3, and 1190.4 as the "BAR PILOTAGE TARIFF"

33 SEC. 12. Section 1191 of the Harbors and Navigation Code is
34 repealed.

35 ~~1191. (a) The board, pursuant to Chapter 6 (commencing with~~
36 ~~Section 1200), shall recommend that the Legislature, by statute,~~
37 ~~adopt a schedule of pilotage rates providing fair and reasonable~~
38 ~~return to pilots engaged in ship movements or special operations~~
39 ~~if rates for those movements or operations are not specified in~~
40 ~~Section 1190.~~

1 ~~(b) A vessel using pilots for ship movements or special~~
2 ~~operations that do not constitute bar pilotage shall pay the rate~~
3 ~~specified in the schedule of pilotage rates adopted by the~~
4 ~~Legislature.~~

5 ~~(e) Consistent with the board's adoption of rate~~
6 ~~recommendations in May 2002, the minimum rates imposed~~
7 ~~pursuant to this section that are in effect on December 31, 2002,~~
8 ~~shall be increased by 26 percent on January 1, 2003; those in effect~~
9 ~~on December 31, 2003, shall be increased by 26 percent on January~~
10 ~~1, 2004; those in effect on December 31, 2004, shall be increased~~
11 ~~by 14 percent on January 1, 2005; and those in effect on December~~
12 ~~31, 2005, shall be increased by 14 percent on January 1, 2006.~~

13 SEC. 13. Section 1191 is added to the Harbors and Navigation
14 Code, to read:

15 1191. Any ship movement or special operation that does not
16 constitute bar pilotage shall be subject to, and shall pay, the rate
17 specified in the schedule of pilotage rates for bay and river pilotage
18 services, as adopted by the Legislature in Section 2 of Chapter 765
19 of the Statutes of 2002, consistent with the board's adoption or
20 rate recommendations in May 2002.

21 SEC. 14. Section 1191.1 is added to the Harbors and Navigation
22 Code, to read:

23 1191.1. The board shall submit to the Office of Administrative
24 Law for publication in the California Regulatory Notice Register
25 and shall publish on its Internet Web site, the schedule of all
26 pilotage rates for ship movement or special operations that do not
27 constitute bar pilotage, as described in Section 1191, as the "BAY
28 AND RIVER PILOTAGE TARIFF."

29 SEC. 15. Section 1195.1 of the Harbors and Navigation Code
30 is amended to read:

31 1195.1. (a) The moneys charged and collected each month
32 from the pilot trainee surcharge pursuant to Section 1195 shall be
33 paid to the ~~Board of Pilot Commissioners' Pilot Trainee Special~~
34 Fund *established* pursuant to Section ~~1159~~. 1195.2. The moneys
35 shall be used only to fund the pilot trainee training program referred
36 to in subdivision (h) of Section 1171.5 and Section 1195.3.

37 (b) Information regarding moneys remitted to the ~~Board of Pilot~~
38 ~~Commissioners' Special Fund pursuant to Section 1159 Pilot~~
39 ~~Trainee Special Fund~~ collected from the surcharge authorized
40 pursuant to Section 1195, or otherwise collected by the board for

1 that purpose, and information regarding moneys spent as pilot
2 trainee training program expenses authorized by Section 1195.3
3 shall be made available to the public upon request and to the board
4 or its finance committee.

5 SEC. 16. Section 1195.2 is added to the Harbors and Navigation
6 Code, to read:

7 1195.2. (a) The Pilot Trainee Special Fund is hereby created
8 within the State Treasury. All moneys received by the board from
9 the surcharge authorized by Section 1195 shall be accounted for
10 at the close of each month to the Controller in the form the
11 Controller may prescribe and, at the same time on the order of the
12 Controller, all these moneys shall be paid into the State Treasury
13 to the credit of the Pilot Trainee Special Fund.

14 (b) Notwithstanding Section 13340 of the Government Code,
15 the moneys in the fund are continuously appropriated for carrying
16 out the purposes specified in Section 1195.1.

17 (c) Except as provided by this division, moneys in the General
18 Fund or any other state fund shall not be transferred to the Pilot
19 Trainee Special Fund or otherwise used to support the board or to
20 pay the debts, obligations, or encumbrances of the board, its
21 licensees, or trainees.

22 SEC. 17. Section 1196.1 of the Harbors and Navigation Code
23 is amended to read:

24 1196.1. (a) The moneys charged and collected each month
25 from the pilot continuing education surcharge pursuant to Section
26 1196 shall be paid to the ~~Board of Pilot Commissioners' Pilot~~
27 *Continuing Education Special Fund created* pursuant to Section
28 ~~1159~~. 1196.2. The moneys shall be used only to fund the pilot
29 continuing education program referred to in subdivision (h) of
30 Section 1171.5 and Section 1196.3.

31 (b) Information regarding moneys ~~remitted to the Board of Pilot~~
32 ~~Commissioners' Special Fund pursuant to Section 1159~~ collected
33 from the surcharge authorized pursuant to Section 1196, or
34 otherwise collected by the board for that purpose, and information
35 regarding moneys spent as pilot continuing education expenses
36 authorized by Section 1196.3 shall be made available to the public
37 upon request and to the board or its finance committee.

38 SEC. 18. Section 1196.2 is added to the Harbors and Navigation
39 Code, to read:

1 1196.2. (a) The Pilot Continuing Education Special Fund is
2 hereby created within the State Treasury. The fund shall receive
3 all proceeds from the surcharge authorized by Section 1196.
4 Moneys in the fund may be used by the board, upon appropriation,
5 for continuing education for pilots as provided in Section 1196.1.

6 (b) Except as provided in this division, moneys in the General
7 Fund or any other state fund shall not be transferred to the Pilot
8 Continuing Education Special Fund or otherwise used to support
9 the board or to pay the debts, obligations, or encumbrances of the
10 board, its licensees, or trainees.

11 SEC. 19. Section 1200 of the Harbors and Navigation Code is
12 amended to read:

13 1200. ~~The~~ (a) *The board may make recommendations to the*
14 *Legislature regarding potential amendments to the pilotage rates*
15 *that are specified in Sections 1190 and 1191.*

16 (b) *The board shall, from time to time, review pilotage expenses*
17 *and establish guidelines for the evaluation and application of these*
18 *expenses regarding its recommendations for adjustments in rates.*

19 SEC. 20. Section 1201 of the Harbors and Navigation Code is
20 amended to read:

21 1201. (a) Any party directly affected by pilotage rates
22 established under this chapter may petition the board for a public
23 hearing on any of the matters set forth in Section 1200. ~~Within~~

24 (b) *Within 10 days from the filing of the petition the board shall*
25 *call public hearings to be held not less than 30 nor more than 60*
26 *days of the date of call for the purpose of obtaining information*
27 *and data relating to the issues raised in holding an evidentiary*
28 *hearing on the petition. The board shall schedule this evidentiary*
29 *hearing before an administrative law judge experienced with*
30 *ratemaking from either the Office of Administrative Hearings or*
31 *the Administrative Law Judge Division of the Public Utilities*
32 *Commission.*

33 (c) *The board shall give notice of the hearings to all interested*
34 *parties who have requested the notification. At the conclusion of*
35 *the hearing or hearings, the board shall review and evaluate all*
36 *evidence obtained and, within 120 days from the filing of the*
37 *petition, shall submit to the Secretary of the Senate and the Chief*
38 *Clerk of the Assembly a copy of its findings and recommendations*
39 *for final determination, supported by a transcript of these*
40 *proceedings of the board. All interested parties shall have the right*

1 to submit comments and evidence in response to a petition prior
2 to the public hearings.

3 (d) The evidentiary hearing shall be a quasi-judicial proceeding
4 held before an administrative law judge who shall act as a finder
5 of fact. The petitioning party shall have the burden of proving, by
6 a preponderance of the evidence, all of the facts upon which the
7 petition is based.

8 (e) At the conclusion of the hearing or hearings, the
9 administrative law judge shall issue a decision setting forth
10 recommendations, findings, and conclusions. The decision shall
11 be supported by findings of fact on all issues material to the
12 decision, and the findings of fact shall be based on the evidence
13 in the record developed by the parties before the administrative
14 law judge. Any recommendation to approve the petition or
15 modification in order to partially approve the petition shall be
16 accompanied by a written explanation of each part of the decision
17 or changes made to the petition in the decision.

18 (f) The decision of the administrative law judge shall be filed
19 with the board and served on all parties without undue delay, but
20 not later than 60 days after the matter has been submitted for
21 decision.

22 (g) The board shall review and evaluate the findings and
23 recommendations in the administrative law judge's decision and
24 all of the evidence obtained and, within 30 days from the filing of
25 the decision, shall either submit to the Secretary of the Senate and
26 the Chief Clerk of the Assembly a copy of the administrative law
27 judge's decision, findings, and recommendations, supported by a
28 transcript of those proceedings, or prepare and submit to the
29 Secretary of the Senate and the Chief Clerk of the Assembly a
30 written statement of its reasons for not submitting the decision.

31 SEC. 21. Section 1201.5 of the Harbors and Navigation Code
32 is amended to read:

33 1201.5. (a) The administrative law judge and board shall not
34 ~~receive consider any written evidence at a public hearing held for~~
35 the purpose of considering pilotage rates unless 10 or more copies
36 of the evidence have been deposited with the board as public
37 documents by the party ~~proposing~~ petitioning for a rate adjustment
38 30 or more days prior to the date set for the commencement of the
39 hearing.

1 (b) The *administrative law judge and board* shall not ~~receive~~
2 *consider any* written evidence at the hearing from any party
3 responding to the ~~request~~ *petition* unless the evidence is deposited
4 with the board 10 or more days prior to the date set for the
5 commencement of the hearing.

6 SEC. 22. Section 1202 of the Harbors and Navigation Code is
7 amended to read:

8 1202. ~~Public~~-(a) *Notwithstanding any other law, any meeting*
9 *of the board or hearing by an administrative law judge at which*
10 *the rates, charges, and levies subject to this division are to be*
11 *imposed, changed, or discussed shall be open and public, and a*
12 *transcript of any such meeting shall be prepared and kept by the*
13 *board.*

14 (b) *Public* hearings for the purpose of investigating
15 *recommendations and findings related to a petition for a change*
16 *in pilotage rates shall be conducted in accordance with the*
17 *Bagley-Keene Open Meeting Act (Article 9 (commencing with*
18 *Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of*
19 *the Government Code) and a full record shall be kept of all*
20 *evidence offered.*

21 (c) *No officer, employee, or agent of the board shall participate*
22 *in the decision of any factually related petition proceeding,*
23 *including participation in or advising the administrative law judge*
24 *as to findings of fact, conclusions of law, or orders, including as*
25 *a witness or declarant regarding a petition. Nothing in this*
26 *subdivision prohibits an administrative law judge from asking for*
27 *an officer, employee, or agent of the board to appear as a witness*
28 *in open session, unless the officer, employee, or agent has a conflict*
29 *of interest or is otherwise prohibited by statute from participating*
30 *in the proceeding.*

31 (d) *Ex parte communications with the administrative law judge*
32 *adjudicating the petition or any members of the board regarding*
33 *a petition filed under this division are prohibited, including any*
34 *oral or written communications concerning procedural matters,*
35 *except for procedural communications with the administrative law*
36 *judge or the board's executive director, if the ex parte*
37 *communications are in writing and transmitted to all other*
38 *interested parties on the same day as the original communication*
39 *with the administrative law judge or executive director. Written*
40 *ex parte communications shall be part of the final record of the*

1 *proceeding made available to the Secretary of the Senate and Chief*
2 *Clerk of the Assembly, but shall not be made available to members*
3 *of the board prior to its final action on a decision by an*
4 *administrative law judge.*

5 SEC. 23. Section 1204 is added to the Harbors and Navigation
6 Code, to read:

7 1204. The Office of Administrative Hearings or the
8 Administrative Law Judge Division of the Public Utilities
9 Commission shall be compensated at cost by the board for costs
10 associated with the conduct of a hearing or other matters as required
11 by this chapter. Any such expense shall be funded by revenues
12 received by the board from the board operations surcharge, as
13 described in Section 1159.2. The board shall ensure that an
14 administrative law judge has been fully compensated pursuant to
15 this section.